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NO.

309

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

STATE OF TEXAS AND TEXAS STATE
PERMANENT SCHOOL FUND,
Petitioners,
v.

TABASCO CONSOLIDATED INDEPENDENT
SCHOOL DISTRICT,
Respondent

Petition for Writ of Certiorari to the United States Circuit
Court of Appeals for the Fifth Circuit, and
Brief Thereon

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*To the Honorable Supreme Court of the
United States:*

The Attorney General of Texas, on behalf of the State of Texas and Texas State Permanent School Fund, prays that a writ of certiorari issue to review the final judgment and decision of the United States Circuit Court of Appeals for the Fifth Circuit entered on May 2, 1944, (R. 61) in cause No. 10,802 on the docket of said court, affirming the judgment of the United States District Court for the Southern District of Texas. (R. 46).

This petition is filed pursuant to an Act of Congress of February 13, 1925, and its various amendments. (U.S.C., Title 28, Sec. 347).

The petitioners are represented by the Attorney General of Texas, whose residence is Austin, Texas.

The respondent, Tabasco Consolidated Independent School District, is a municipal corporation, and is represented by its attorney, Honorable C. M. Thompson, of McAllen, Texas.

RECORD

This cause involves alone the question of the validity of the order of the trial court, which was approved by the Circuit Court, which approved a plan of composition of its debts, submitted by petitioner, a local taxing unit in Texas.

The transcript of record on first appeal was expensive to print. Counsel for all parties, as well as the Circuit Court, agreed that the transcript of record on first appeal might be used as a portion of the transcript of record on last appeal.

For convenience petitioner has marked the original record as Volume 1 and the last record as Volume 2 and reference to the original record in the following petition and brief is (O.R.) and to the new or last record as (R).

Petitioners are filing herewith a certified copy of the record in said two volumes from the Clerk of

the Circuit Court for the Fifth Circuit, together with eight extra printed copies of said records. .

STATEMENT OF THE MATTERS INVOLVED

Respondent, as plaintiff below, and as appellee in the Fifth Circuit Court of Appeals, instituted this suit on June 15, 1940, for a composition of its debts, under Chapter X of the National Bankruptcy Act, approved July 1, 1898, as amended by Public No. 302 of the 75th Congress, approved August 16, 1937, as amended by the Chandler Amendment, changing Chapter X to Chapter IX. (O.R. 3-11).

On July 25, 1941, the respondent filed its First Amended Original Petition and Plan of Composition. (O.R. 32-39).

On August 16, 1941, the District Court for the Southern District of Texas entered an interlocutory decree confirming the amended plan of composition filed July 25, 1941. The plan, approved on August 16, 1941, permitted the RFC to retain \$16,000.00 in warrants until or unless the respondent refunded same at 65c on the dollar.

It found that the District owed \$459,000.00 in bonds, and that same were owned by the RFC and the Texas State Permanent School Fund, and provided that the respondent could take bonds of the RFC at 65c on the dollar of the principal of said bonds, bearing 4% interest, and that the Texas State Per-

manent School Fund should take 65c on the dollar in cash. (O.R. 44-50).

The petitioner, Texas State Permanent School Fund of Texas, appealed from said interlocutory decree, and the Fifth Circuit Court of Appeals reversed the judgment of the trial court. (See Opin. 132 F. (2) 62, and 133 F. (2) 196).

The respondent, School District, on April 27, 1943, filed its Supplemental Petition. (R. 4-6).

On May 5, 1943, the petitioner filed its protest to the amended plan of composition. (R. 7-11).

On June 22, 1943, the District Court of the United States for the Southern District of Texas refused to hear any evidence as to the then solvency of the School District, or its ability to pay more than 65c on the dollar of its indebtedness, and entered its interlocutory decree, in all things confirming the amended plan of composition of the respondent, which required bondholders to take 65c on the principal of their bonds in full settlement. (O.R. 46-50).

The Circuit Court of Appeals for the Fifth District on May 2, 1944, affirmed the judgment of the trial court, (R. 61) and on May 25, 1944, overruled petitioners' motion for rehearing. (R. 67).

QUESTIONS PRESENTED

POINT ONE: The error of the court in holding that the question of the financial condition,

and the solvency of the petitioner, Tabasco Consolidated Independent School District, relative to its ability to pay its debts, should be controlled by its financial condition at the time the original petition was filed in 1940, or when its first amended petition was filed in 1941, rather than its financial condition when its final amended petition for composition was filed and approved in May, 1943.

POINT TWO: The error of the court in refusing to hear evidence pertaining to the financial condition and the solvency of the Tabasco Consolidated Independent School District in May, 1943, when the final plan of composition was approved by the trial court.

POINT THREE: The error of the court in holding that the evidence showed that the Tabasco Consolidated Independent School District was not able to pay more than 65c on the dollar of its indebtedness.

POINT FOUR: The error of the court in holding that the plan of composition approved was fair to the State Permanent School Fund of Texas, because it appears that the bonds held by the RFC bore interest at from one to five per cent per annum, and all of the bonds held by the Texas State Permanent School Fund bore five per cent, and none of the interest had been paid for more than four years. The record shows that the RFC purchased its bonds at 65c on the

dollar, presumably because of the small interest rate said bonds bore. The plan approved by the court required the Texas Permanent School Fund to accept 65c on the dollar of its principal, and allow the RFC the same price, plus allowing the RFC to collect 65c on the dollar on \$16,000.00 illegal and uncollectible warrants, which it held.

REASONS WHY WRIT SHOULD BE ALLOWED

1. The United States Circuit Court of Appeals for the Fifth Circuit has decided a question of procedural law relative to the application of the Bankruptcy Act, which permits local taxing units of a state to have a composition of its debts, which is of momentous importance, said court having held that the question of the solvency of the local taxing unit should be governed by its condition at the time its original petition for composition was filed, rather than at the time the final amended plan of composition was approved by the trial court.

2. The Circuit Court of Appeals has held that although the law in Texas, under which the Tabasco Consolidated Independent School District was created, required the District to levy a tax of \$1.50 to pay its bonded indebtedness, said District could use the larger portion of said tax for its maintenance, and divert same from the payment of its bonded indebtedness.

3. The Circuit Court of Appeals has held that the

Tabasco Consolidated Independent School District was insolvent and unable to pay more than 65c on the dollar of its principal indebtedness, although the record shows the district is solvent as revealed by the following facts.

The total budget expense for running the school is \$43,400.00 (O.R. 144). The outside amount required to service all the outstanding bonds is \$22,537.57—total expense \$65,937.57.

The district received from the state school apportionment for operating expenses \$27,000.00 and the tax rate of \$1.50 on the \$3,000,000.00 assessed property values would produce \$45,000.00 (O. R. 145), a total income of \$72,000.00.

Petitioner submits the above, clearly demonstrates that the plan of composition approved, which required the State Permanent School Fund to accept 65c on the dollar of the principal of its 5% bonds, is neither fair, nor just, nor allowable under the Bankruptcy Act.

4. The Circuit Court of Appeals has erroneously held that the Tabasco Independent School District, in direct violation of the Texas statute creating said District, could take the tax levied and collected under the law to pay bonds, and use same for the maintenance of the schools, and thereby divert said tax money to other and different purposes than those for which it was collected.

WHEREFORE, petitioners respectfully pray that a writ of certiorari be issued to the honorable Circuit Court of Appeals for the Fifth Circuit by this court, and upon final hearing the judgment of the Circuit Court, as well as the judgment of the trial court, be reversed, and the plan of composition approved by said court be in all things denied.

Respectfully submitted,

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